

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KATIE M CANNON  
502 S 4<sup>TH</sup> AVE  
DEDHAM IA 51440**

**FARMLAND FOODS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**DENNIS MCELWAIN  
ATTORNEY AT LAW  
PO BOX 1194  
SIOUX CITY IA 51102**

**Appeal Number: 05A-UI-04464-JTT  
OC: 03/06/05 R: 01  
Claimant: Appellant (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) - Able and Available  
Section 96.19(38)(c) - Temporarily Unemployed  
871 IAC 24.23(10) - Leave of Absence

STATEMENT OF THE CASE:

Katie M. Cannon filed a timely appeal from the April 20, 2005, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 18, 2005. Attorney Dennis McElwain represented Ms. Cannon, and presented testimony through Ms. Cannon and Mark Nemitz, President of United Food and Commercial Workers Local 440. The employer participated through Denise Baldwin, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katie M. Cannon commenced her employment with Farmland Foods as a full-time production laborer on

September 15, 2003. On March 8, 2005, the employer placed Ms. Cannon on an involuntary leave of absence. Ms. Cannon was pregnant at the time. Ms. Cannon gave birth to a son on May 9, 2005. After Ms. Cannon gave birth to her son, acquiesced in the leave of absence and continues on the leave of absence at this time so that she can be with her newborn child. Ms. Cannon is still employed by Farmland Foods and expects to return to the employment six weeks from May 9.

Prior to commencing the leave of absence, Ms. Cannon worked the night shift at Farmland Foods. Ms. Cannon did not find of the work difficult. During one week, Ms. Cannon would work from 3:00 p.m. to 1:30 a.m. During the next week, Ms. Cannon would work from 5:00 p.m. to 1:30 a.m. The workers in Ms. Cannon's area worked in excess of 40 hours per week at least every other week and worked six or seven days per week.

Between February 28 and March 2, 2005, Ms. Cannon presented Denise Baldwin, Human Resources Manager, with a doctor's note that restricted her to working 8 hours per day and 40 hours per week until the birth of her child. Ms. Cannon had been experiencing swelling in her ankles, but was otherwise enjoying a "normal" pregnancy. In response to the doctor's note, Ms. Baldwin informed Ms. Cannon that the employer could not accommodate the medical restrictions and that Ms. Cannon would need to go on a medical leave of absence instead. Ms. Cannon continued to express her desire to work full-time until the birth of her child.

Ms. Baldwin's statement of the employer's position was not based on a written policy or the employer's contract with the union. Instead, Ms. Baldwin's statement was based upon the employer's previous experience with employees who had medical restrictions that restricted them to working eight-hour shifts and/or 40 hours per week. The employer had concluded that accommodating such medical restrictions unduly interfered with the duties of supervisors. The employer had further concluded that providing an eight-hour workday for an employee who ordinarily worked ten-hour shifts was too great an inconvenience, because it required the employer to secure another employee to work the last two hours of the shift. Likewise, the employer had concluded that providing a 40-hour work week for an employee who ordinarily worked more than 40 hours per week was too great an inconvenience, because it required the employer to secure another employee to work the additional overtime shifts.

Mark Nemitz, President of United Food and Commercial Workers Local 440, had worked at Farmland Foods for 19 years prior to assuming his position as president of the union local, a position he has held for nine years. It has been Mr. Nemitz's experience that Farmland Foods would allow an employee to continue working so long as the employee's doctor allowed them to do so.

#### REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Ms. Cannon was on a negotiated leave of absence during the period of March 8 through May 8, 2005. It does not. The next question is whether the evidence in the record establishes that Ms. Cannon was temporarily laid off from her employment during the same period. It does. The next question is whether the evidence in the record establishes that Ms. Cannon has been on a negotiated leave of absence since May 9, 2005. It does.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The evidence in the record establishes that from March 8 through May 8, 2005, Ms. Cannon was on a temporary lay-off from Farmland Foods. See Iowa Code Section 96.19(38)(c). Because Ms. Cannon was temporarily laid off, she was not required to be able and available for other employment. See Section 96.4(3). Ms. Cannon was able to work during this time period, as indicated by the note from her doctor. See 871 IAC 24 22(1)(a).

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The evidence in the record further establishes that since May 9, 2005, the day her son was born, Ms. Cannon has been on an approved leave of absence. See 871 IAC 24.22(2)(j).

Accordingly, Ms. Cannon is disqualified for benefits for the period that began May 9, 2005. See 871 IAC 24.22(2)(j). The negotiated leave of absence expires six weeks from May 9, 2005, unless Ms. Cannon and Farmland Foods agree to extend the period of the leave. In the event that Ms. Cannon does not return to work at Farmland Foods at the end of the leave of absence, the additional provisions of 871 IAC 24.22(2)(j) would apply.

DECISION:

The Agency representative's decision dated April 20, 2005, reference 02, is modified in favor of the claimant as follows:

During the period of March 8 through May 8, 2005, the claimant was temporarily laid off and, therefore, eligible for benefits, provided she met all other eligibility requirements. During that period, the claimant was able and available to return to her employment, but was not required to be available for other employment.

The claimant has been disqualified for benefits since May 9, 2005, the day she commenced a negotiated leave of absence, and continues to be disqualified for benefits so long as she continues on the negotiated leave of absence.

JT/sc